

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Ross et al.

Serial No. 09/901,512

Group Art Unit: 3692

Filed: July 9, 2001

Examiner: Nguyen, Nga B.

Appeal No. 2007-1587

For: MEDICAL RECORDS,
DOCUMENTATION, TRACKING
AND ORDER ENTRY SYSTEM

REQUEST FOR REHEARING
PURSUANT TO 37 CFR §§ 41.52

Mail Stop Appeal Brief—Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Appellants request rehearing of the appeal taken from the examiner's final rejection. Appellants' brief supporting this request is attached.

Request for Oral Hearing

The present decision may well impact several other previously issued patents as well as presently pending applications. Appellants understand that oral hearings are not normally conducted in rehearing proceedings (MPEP § 1214.03). However, it is respectfully submitted that the implications of the Board's present decision reach beyond the present application, and it would therefore be appropriate to permit oral proceedings.

In keeping with 37 CFR § 41.47(b), Appellants are filing with this request for rehearing a separate paper captioned "REQUEST FOR ORAL HEARING" accompanied by the fee set forth in § 41.20(b)(3).

I. Introduction

The Decision on Appeal (Decision) affirms the rejection of the presently pending claims based upon an erroneous premise, raised for the first time in the Decision, that patentable weight is not given to descriptive material unless that material has a new and non-obvious functional relationship to underlying physical system components. Such reasoning is without legal basis and contrary to a substantial body of law regarding the patentability of business methods and systems (e.g., user interfaces) that are largely based upon the information processed instead of the physical structures utilized to carry out these statutory processes and systems.

Appellants' claimed invention is directed to a *method* for providing access, via peripheral terminals, to patient record documentation in a system capable of rendering *patient record information* in a variety of *grease board views*. Claim 7 recites a "displaying" step for presenting "an active patient list grease board" which provides access to active patient records including an enumerated set of associated patient information. The active patient list grease board is presented to users according to a designated one of the variety of grease board views supported by the system. See, Appendix, Claim 7. Appellants' claims also recite a *system* for presenting, at a peripheral display terminal, *patient information* in a variety of *grease board views*. See, Appendix, Claim 37. The independent claims define the displaying step according to enumerated information contained within each one of a set of active patient records. The enumerated contents define an active patient record represented in the claimed grease board views and further define the function carried out during the recited "displaying" step. An active patient list grease board, as defined in the claims, provides an *active patient list* through which patient record information, defined explicitly by enumeration in the claims, is provided.

Collen discloses a hierarchical arrangement of user interfaces for accessing a variety of data in a hospital environment. Collen discloses a *single* grease board view – Fig. 6-1b. The "general index" view, upon which the Board's decision relies to show a second grease

board view, contains a "listing of terminals" in a hospital – clearly not an alternative active patient list grease board view to the one depicted in Fig. 6-1b.

The Decision does not dispute that the claims require a variety of grease board views. Instead, the Decision disregards recited elements of the claims by relying upon an inapplicable previous decision of the Federal Circuit (Lowry) involving the patentability of claims directed to a new and non-obvious "data structure." However, none of Appellants' claims recite data structures, and thus the Decision should not have disregarded claim elements defining the step of displaying an active patient list grease board according to a designated one of multiple supported grease board views.

Appellants respectfully request that the Board reconsider:

1. Whether the case law supports the Board's position that certain recited elements of Appellants' claims can be disregarding during determinations of patentability of the presently pending claims in view of the prior art;
2. Whether Collen discloses a variety of grease board views; and
3. Whether any of the alternative grease board views recited in claims 10-12 and 42-44 are patentable over the prior art.

II. Background

This appeal is from a final rejection of claims 7-14 and 37-46 under 35 USC §§ 102 and 103. The Board affirmed, on new grounds, the previous rejection of each of the presently pending claims over the prior art.

The Decision found that "active patient grease boards as used in the claims refers to different formats, e.g., department layout, waiting patients, patients who have complaints, etc. for the patient information enumerated...." See, Findings of Fact (FF) 1. In affirming the rejection of claims 7, 13, 37-40, 45 and 46 as anticipated by Collen, the Board implicitly held that Collen discloses a variety of grease board views that display, when designated, a set of related information from each of a set of active patient records. See FF 7. The portion of Collen relied upon in the decision states: "In the event of error in selection of patient's name,

the user may use one of the control functions to branch back to the local census or to a general index to all *terminal locations* in the hospital." (emphasis added). This portion of Collen describes the presentation of a list of terminals in a hospital. It does not describe displaying a listing of active patient records.

In affirming the rejection of each of the claims, the Decision held that, in view of *Lowry*, elements of the presently pending claims defining an active patient record are irrelevant to determining patentability. The Decision, on this basis, disregarded several recited claim elements. These disregarded elements include explicit limitations defining the type of information displayed (an active patient list) and the way in which the information is presented (according to a designated one of a variety of supported grease board views).

III. The Claims Require Multiple Active Patient List Grease Board Views As Defined by All Elements of the Claims

A. Nonfunctional Recitations in the Claims Cannot Simply Be Ignored

The crux of the Decision on Appeal is that "[p]atentable weight need not be given to descriptive material" unless that material has a new and non-obvious functional relationship to the underlying physical components of the system. However, even at first blush, this line of reasoning cannot be correct. For example, this line of reasoning would negate patentability for almost all business method claims, in conflict with recent federal appellate court decisions to the contrary. More importantly, the Board's decision to automatically disregard nonfunctional recitations erroneously relies on inapposite cases to extend data structure law and printed matter principles into the area of **system** and **method** claims.

There is no need to create new law here. The Patent Office has already addressed the issue of nonfunctional language, and has come to a very different conclusion than that set forth in the Decision. See, for example, MPEP §2106.01:

The presence of the claimed nonfunctional descriptive material is not necessarily determinative of nonstatutory subject matter. For example, a computer that recognizes a particular grouping or sequence of musical notes read from memory and thereafter causes another defined series of notes to be played, requires a functional

interrelationship among that data and the computing processes performed when utilizing that data. As such, a claim to that computer is statutory subject matter **because it implements a statutory process.**

Thus when, as here, nonfunctional language is part of a statutory **process**, it **cannot** simply be ignored.

In contrast to the MPEP, which is precisely on point with the issues on appeal, the cases relied upon in the Decision are irrelevant in the context of statutory processes and systems. *In re Lowry* pertains to the patentability of a data structure, not a statutory process. *In re Ngai* pertains to the patentability of a written instructional pamphlet, also clearly not a statutory process. *Ex parte Mathias* pertains to an icon, similarly not a statutory process.

In short, there is no authority for automatically ignoring nonfunctional language in a statutory process or system claim, and indeed, the MPEP itself dispels any notion that such a practice is appropriate.

In view of the above, the Decision erred in disregarding recited elements of Appellants' method and system claims by applying standards generally applied to data structures. None of the pending claims is directed to a "data structure." In fact, the manner in which the patient record information is stored is immaterial to the present invention. Claim 7 is directed to a method for displaying active patient list grease boards providing access to patient records (defined in claim 7 as including certain related patient information). Claim 37 is directed to a system including a "tracking module" that supports displaying patient record sets in an active patient list grease board according to a designated one of a variety of grease board views supported by the system. In both claims 7 and 37, the displaying function is integrally linked to the type of information displayed within the active patient list grease board. The elements of claims 7 and 37 that the Decision disregards (see Decision page 12) are in actuality definitional language used to define the nature of the "active patient list grease board" views presented in accordance with the recited "displaying" element in each of a set of dependent claims.

B. The Collen Reference Discloses Only A Single Grease Board View

Collen discloses a local census including a list of patients (Collen, page 124, FIG. 6-1b) and a general index listing *all terminal locations*. Collen does not state that the general index displays a listing of patients. The Decision does not identify any disclosure within Collen supporting a conclusion that the general index control causes a listing of active patients in a grease board view. Instead, the text of Collen unequivocally states that the general index contains a listing of *all terminal locations*. A display containing a listing of terminal locations does not meet the definition of the displayed active patient list grease board view. In the event that the current rejection of claims 7 and 37 are maintained, Appellants seek clarification of the basis for the Decision's conclusion that the "general index" constitutes a second active patient grease board view since the elements defining patient records represented in the grease board view do not appear to be present in Collen's "general index."

C. The Properly Construed Claims Are Clearly Distinguishable From Collen.

The Decision on Appeal does not assert that Collen's "general index" displays an active patient list grease board view. Instead, at page 12 the Decision disregards all elements defining the content of the display in accordance with an erroneous application of *Lowry* to method and system claims. When the claims are properly construed by considering all recited elements, Collen's general index is clearly not a grease board view since it does not display an active patient list. Thus, Collen discloses only a single grease board view and cannot meet all the recited elements of the presently appealed claims. The disregarded limitations of claims 7 and 37 define the displayed active patient list grease board functionality (providing a listing of patients and associated information). The Decision does not assert that Collen's general index meets these claim elements, and Appellants' therefore seek reversal of the current rejection of each of the presently pending claims.

Appellants similarly request reversal of the rejections of claims 10-12, 40-42, 45 and 46 since the rejection of each of these claims is based upon the aforementioned erroneous application of claim construction principals relating to "data structures."

IV. Conclusion

Appellants request modification of the Decision to (1) remove the new grounds of rejection of the presently pending claims recited in the Decision on Appeal and (2) reverse, to the extent previously affirmed, the rejection of the presently pending claims set forth in the Final Office Action.

Respectfully submitted by,

Date: April 29, 2008



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APPENDIX

Appealed Claims

7. (Previously presented) A method of providing access to patient record documentation, patient tracking and order entry information in a system capable of rendering patient information in a variety of grease board views, comprising the steps of:

logging a user on to a peripheral terminal, and

displaying, at the peripheral terminal, a name of the user and an active patient list grease board, wherein the active patient list grease board is capable of displaying, from each one of a set of active patient records, a set of related information including:

room location,

patient's name,

patient's physician,

nursing orders,

patient priority and elapsed time of stay,

status of assignment of nurse and physician, and

status of X-rays, labs, tests, nurses' orders, records, dictation and vital signs,

wherein patient record information sets, from the active patient records, are presented on the peripheral terminal, during the displaying step, in accordance with a designated one of the variety of grease board views.

8. (Previously presented) The method of claim 7, wherein an ordered status is shown in small letters and a completed status is shown by large letters for X-rays, labs, tests, nurses' orders and dictation transcription.

9. (Previously presented) The method of claim 7, wherein the displaying step comprises displaying the active patient list grease board information in department layout.

10. (Previously presented) The method of claim 7, wherein the displaying step comprises displaying the active patient list grease board information in the form of a list of patients waiting to be seen by a physician, in order of priority.

11. (Previously presented) The method of claim 7, wherein the displaying step comprises displaying the active patient list grease board information in the form of a list of patient complaints.

12. (Previously presented) The method of claim 7, wherein the displaying step comprises displaying the active patient list grease board information in the form of a list of patients whose reports have not been dictated by a physician.

13. (Previously presented) The method of claim 7, wherein the logging a user on comprises inserting a security card in a receiver connected to the peripheral terminal, which logs on and identifies the user and brings up the active patient list grease board.

14. (Previously presented) The method of claim 13, wherein pulling the security card from the receiver automatically exits the screen, establishes a security lockout on the peripheral terminal, and saves the data which has been entered on the screen by transferring the data from the peripheral terminal to a file server communicatively connected to the peripheral terminal.

37. (Previously presented) A system for presenting, at a peripheral display terminal, patient information in a variety of grease board views, the system comprising:

a security module including computer executable instructions for logging a user on to a peripheral terminal, and

a tracking module including computer executable instructions for displaying, at the peripheral display terminal, an active patient list grease board, wherein the active patient list grease board is capable of displaying, from each one of a set of active patient records, a set of related information including the patient's name and a variety of task-related information, wherein patient record information sets, from the active patient records, are presented on the peripheral terminal, during the displaying step, in accordance with a designated one of the variety of grease board views.

38. (Previously presented) The system of claim 37 wherein the security module and tracking module cooperatively limit access, by a logged on user, to patient information associated with ones of the set of active patient records.

39. (Previously presented) The system of claim 38 wherein access to patient information is provided in the form of a set of functions that modify data associated with the active patient records.

40. (Previously presented) The system of claim 39 wherein access is based upon a user type associated with the logged on user.

41. (Previously presented) The system of claim 37 wherein the variety of grease board views comprises a department layout view of patient information associated with the active patient records that includes a map of rooms and patient information associated with an occupant.

42. (Previously presented) The system of claim 37, wherein the variety of grease board views comprises a waiting patients view including a list of patients waiting to be seen by a physician, in order of priority.

43. (Previously presented) The system of claim 37, wherein the variety of grease board views comprises a patient complaints view.

44. (Previously presented) The system of claim 37, wherein the variety of grease board views comprises a dictation status view comprising at least a list of patients whose reports have not been dictated by a physician.

45. (Previously presented) The system of claim 37, wherein the variety of grease board views comprises an outstanding orders view comprising at least a list of tasks that are pending for identified patients.

46. (Previously presented) The system of claim 37, wherein the variety of grease board views comprises a vital signs view comprising most recent vital signs taken for a list of identified patients.